

# Strategy of Cross Examination

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# Synergy

Noun; *SIN-er-jee*

The interaction of elements that when combined produce a total effect that is greater than the sum of the individual elements.

Points made on cross examination should support your theory of the case and illustrate your theme of the case.

# WHY AM I TALKING?

- FURTHER THE DEFENSE NARRATIVE WITH STATE'S WITNESS
- LESSEN THE IMPACT OF DIRECT TESTIMONY BY DISCUSSING INCONSISTENCIES, POTENTIAL BIAS AND LACK OF OPPORTUNITY FOR WITNESS TO KNOW WHAT THEY ARE TESTIFYING ABOUT
- STATE'S WITNESSES AREN'T OBSTACLES, THEY ARE OPPORTUNITIES

- TIE DOWN AS MANY OF THE FACTS THAT SUPPORT YOUR NARRATIVE IMMEDIATELY WITH THE STATE'S FIRST WITNESS
- START WITH FACTS THAT CAN'T/WON'T BE DENIED AND BUILD **MOMENTUM**
- LEAVE THE ULTIMATE ISSUE FOR LAST—IF AT ALL

# WHO AM I TALKING TO?

- ALLEGED VICTIMS/VICTIMS
- INCIDENT/NON-INCIDENT WITNESSES
- INVESTIGATING LAW ENFORCEMENT
- CHAIN WITNESSES
- SNITCHES

- **ALLEGED VICTIM CASES:**

- Consensual Sex vs. CSC
- Crack Rental vs. Auto Theft

**ACTUAL VICTIM CASES, DON'T CONTEST THE CRIME,  
CONTEST THE PERPETRATOR**

- INCONSISTENCIES

- Has the witnesses' version of the incident changed over time? Review recorded interviews and incident reports

## POTENTIAL BIAS

History between Victim and Defendant or  
between Witness, Victim and/or Defendant

## OPPORTUNITY TO KNOW

Time/Place/Circumstance

- INVESTIGATING OFFICERS
  - Point out holes in the investigation
    - Collect/Test All Evidence?
    - Interview all potential witnesses?
  - Did they interview the Defendant and get his side of the story?
  - If not, address the Inevitability Of Prosecution:
    - Arrest Warrant Process
    - Preliminary Hearing
    - Grand Jury Procedure
    - FIRST OPPORTUNITY TO TELL OUR SIDE OF THE STORY



- THE JAILHOUSE SNITCH
  - IMPEACH WITH PRIOR CRIMINAL HISTORY
  - CURRENT CHARGES/PENAL EXPOSURE
  - SNITCH CONTACT SOLICITOR OR DID SOLICITOR GO TROLLING AT JAIL FOR SNITCHES?
  - TIME/PLACE/CIRCUMSTANCE OF ALLEGED CONFESSION: OPPORTUNITY TO KNOW INFO
  - HOW MANY INTERVIEWS WITH PROSECUTOR?
  - PROMISES VS. WHAT IS HOPED FOR; NO HELP WITHOUT THIS STORY

- THE ROGUE WITNESS
  - SHORT, YES OR NO, ONE FACT QUESTIONS
  - OBJECT TO NON-RESPONSIVE ANSWERS
  - “PLEASE ANSWER MY QUESTION, THEN YOU CAN PROMOTE YOUR AGENDA”
  - **GET IN AND GET OUT**

- FEEL FREE TO SKIP WITNESSES WHO NEITHER ADD TO YOUR NARRATIVE NOR ARE DAMAGING TO YOUR CASE. CRYSTALLIZE YOUR THEORY; DON'T WEAKEN IT AND CONFUSE THE JURY BY ARGUING ABOUT THINGS THAT DON'T MATTER

# HOW AM I TALKING?

- BE MINDFUL OF YOUR TONE WITH EACH WITNESS; IT IS COUNTER PRODUCTIVE TO ATTACK EVERYONE
  - REMEMBER: MANY WITNESSES (INCLUDING POLICE OFFICERS) DON'T HAVE KNOWLEDGE OR AN OPINION REGARDING GUILT OR INNOCENCE
  - BE MS./MR. NICE WHENEVER POSSIBLE